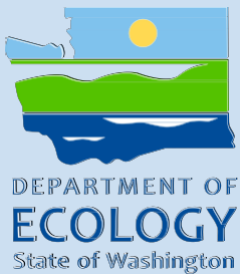




2014 Report to the Legislature: Statewide Progress on Setting Instream Flows



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2014 Report to the Legislature: Statewide Progress on Setting Instream Flows

by

Ann Wessel

Water Resources Program

Washington State Department of Ecology
Olympia, Washington

Program Mission

The mission of the Water Resources Program is to support sustainable water resources management to meet the present and future water needs of people and the natural environment, in partnership with Washington communities.

Authorizing Laws

RCW [18.104](#), Water Well Construction Act (1971)
RCW [43.21A](#), Department of Ecology (1970)
RCW [43.27A](#), Water Resources (1967)
RCW [43.83B](#), Water Supply Facilities (1972)
RCW [43.99E](#), Water Supply Facilities – 1980 Bond Issue (Referendum 38) (1979)
RCW [86.16.035](#), Department of Ecology Control of Dams and Obstructions (1935)
RCW [90.03](#), Water Code (1917)
RCW [90.08](#), Stream Patrolmen (1925)
RCW [90.14](#), Water Rights Claims Registration and Relinquishment (1967)
RCW [90.16](#), Appropriation of Water for Public and Industrial Purposes (1869)
RCW [90.22](#), Minimum Water Flows and Levels (1969)
RCW [90.24](#), Regulation of Outflow of Lakes (1939)
RCW [90.28](#), Miscellaneous Rights and Duties (1927)
RCW [90.36](#), Artesian Wells (1890)
RCW [90.38](#), Yakima River Basin Water Rights (Trust Water) (1989)
RCW [90.40](#), Water Rights of United States (1905)
RCW [90.42](#), Water Resource Management (Trust Water) (1991)
RCW [90.44](#), Regulation of Public Groundwaters (1945)
RCW [90.46](#), Reclaimed Water Use (1992)
RCW [90.54](#), Water Resources Act of 1971 (1971)
RCW [90.66](#), Family Farm Water Act (1977)
RCW [90.80](#), Water Conservancy Boards (1997)
RCW [90.82](#), Watershed Planning (1997)
RCW [90.86](#), Joint Legislative Committee on Water Supply during Drought (2005)
RCW [90.90](#), Columbia River Basin Water Supply (2006)
RCW [90.92](#), Pilot Local Water Management Program (Walla Walla) (2009)

Case law

Washington case law plays a vital role in providing determinations and rulings that also govern water resources management. The Water Resources Program's website on laws, rules, and case law can be found at <http://www.ecy.wa.gov/programs/wr/rules/rul-home.html>.

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Executive Summary

On Oct. 3, 2013, the Washington state Supreme Court ruled in *Swinomish Indian Tribal Community v. Department of Ecology* that Ecology exceeded its authority in establishing reservations of water when amending the rule for the Skagit watershed in 2006. The decision reinstates the 2001 Skagit Instream Flow Rule, having a profound effect on rural water supply in Skagit County. Under the 2001 rule, water rights established on or after April 14, 2001, are subject to curtailment when the senior minimum instream flow rights are unmet. Ecology has been working very hard to provide solutions that will secure water availability for approximately 475 rural homes built since April 14, 2001.

Statewide, the *Swinomish* decision has affected Ecology's progress on adopting instream flow rules. The decision severely restricts the establishment of reserves of water for future use if it is necessary to rely on Overriding Consideration of the Public Interest (OCPI). Without reserves, adopting instream flow rules may preclude rural development if mitigation for streamflow impacts is not available. The challenge is especially acute in tributary areas, where smaller streams provide valuable spawning habitat and streamflows are typically below recommended instream flow levels in the late summer.

Ecology and Washington Department of Fish and Wildlife (WDFW) staff members worked with the WRIA 25 Grays-Elochoman and the WRIA 26 Cowlitz watershed planning unit to revise plan recommendations regarding closures and water management. Amendments to the watershed plan were adopted on June 17, 2014. Rule adoption, however, is hampered by the recent decision in *Swinomish*.

On January 27, 2015, Ecology adopted a new rule for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) Aquifer. The rule establishes instream flows and helps protect Washington State interests in the water resources of the Spokane River. The *Swinomish* decision has little effect in this area as only a limited portion is not served by a public water supplier with inchoate water rights.

Ecology received two petitions to amend existing instream flow rules: Chapter 173-501 WAC, the Instream Resources Protection Program for the Nooksack Water Resource Inventory Area (WRIA 1); and Chapter 173-518, the recently adopted Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA 18). Ecology also received a third petition to repeal Chapter 173-501 WAC, Instream Resources Protection Program – Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4). Ecology determined it was necessary to deny all three petitions.

A number of watersheds have requested rulemaking. Ecology is working with these watersheds, but has no immediate plans for rulemaking in these areas. The primary reason is the effect of the *Swinomish* decision on Ecology's ability to develop rules that would leave water available for future growth in rural areas, without a high risk of being challenged.

In addition to completing rule adoption for the Spokane River, Ecology's instream flow rulemaking staff is engaged in the effort to find solutions for rural domestic water needs, responding to petitions to amend or repeal rules, responding to requests for information about instream flow protection, assisting with rule interpretation, and addressing pending litigation.

Ecology continues with implementation of rules across the state:

- Significant Ecology resources are going towards rule implementation in the Skagit basin, focusing on solving water supply needs in rural areas.
- In response to concerns raised by the Squaxin Tribe, Ecology is making progress on a groundwater model for the Johns Creek subbasin to determine actions to protect streamflows in the Kennedy-Goldsborough watershed, WRIA 14.
- Ecology and Clallam County are successfully implementing the recently adopted rule for the Dungeness watershed. Over 50 mitigation certificates for new homes have been sold since the rule took effect; and Ecology and the County jointly hosted 10 rule implementation public forums, held about every other month.

Purpose

The Department of Ecology (Ecology) has prepared this report to the Legislature on the progress of setting instream flows¹ as required by RCW 90.82.080(6), which states:

“The department shall report annually to the appropriate legislative standing committees on the progress of instream flows being set under this chapter, as well as progress toward setting instream flows in those watersheds not being planned under this chapter. The report shall be made by December 1, 2003, and by December 1st of each subsequent year.”

This is the twelfth annual report prepared by Ecology on the setting of instream flows.

Instream Flow Progress

Instream flow protection statutes have been in place in Washington State for over 65 years. The state’s Water Flow Policy, adopted in 1949, states: “It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.” (RCW 77.57.020, formerly RCW 75.20.050)

Ecology’s program to adopt instream flow protection in rules began in the 1970s after adoption of the Minimum Water Flows and Levels Act, Chapter 90.22 RCW, in 1967, and the Water Resources Act of 1971, Chapter 90.54 RCW.

Although often referred to as “instream flow rules,” it is more accurate to call them “water management rules.” In addition to setting instream flow levels and stream management control points (points along a watercourse where instream flows are measured), today’s rules include:

- Determinations of seasonal and year-round closures.²
- Management of groundwater withdrawals to protect surface water resources, including permit-exempt groundwater withdrawals.
- Water management tools to ensure reliable future water supplies.

¹ Instream flows are streamflow levels, set in rule and designated as an allocation under the water code, that protect and preserve instream resources such as wildlife, fish, recreation, navigation, aesthetics, water quality, and livestock watering from future allocations of water.

² During seasons and in locations where water is not reliably available above the instream flow levels, streams and aquifers are closed to new appropriations and future uses. The purpose of a closure is to avoid impairment to existing water rights, including instream flows.

A series of significant court decisions have critically influenced Ecology's instream flow protection and water management framework. These decisions have clarified what it means to protect instream flows from impairment, brought groundwater withdrawals squarely within the scope of potential causes of impairment that must be addressed, and verified the obligation under the Growth Management Act to ensure legal as well as physical water availability when determining whether water is available for new development.

Most recently, on Oct. 3, 2013, the Washington state Supreme Court ruled in *Swinomish Indian Tribal Community v. Department of Ecology* that Ecology exceeded its authority in establishing reservations of water when amending the rule for the Skagit watershed in 2006. The Court repealed the 2006 rule amendment, leaving in place the original rule adopted in 2001.³

The 2006 rule amendment in the Skagit relied on language in RCW 90.54.020(3)(a) which states that withdrawals of water that would conflict with instream flows "shall be authorized only in those situations where it is clear that overriding considerations of the public interest [OCPI] will be served." In the Skagit, Ecology relied on a finding that OCPI allowed small impairment of the instream flow levels in order to establish reservations of water for new uses that would not be subject to interruption when stream flows fall below the instream flow levels.

The Supreme Court's decision holds that OCPI cannot be applied in the context of watershed management rulemaking by Ecology: "This [OCPI] exception does not permit the Department of Ecology to reassess the relative merits of uses and reallocate water that is needed to maintain the instream flows through reservations of water for future beneficial uses." As a result Ecology's prior practice of establishing reservations of water that allow non-interruptible water uses in basins with adopted instream flows is undergoing review.

The *Swinomish* decision has affected Ecology's progress on adopting instream flow rules in other watersheds. Any minimum flow requirements set by rule are water rights with seniority, as of the date of the rule, over all subsequent rights. This means that adopting rules in other basins that follow the "reservation model" employed in the 2006 Skagit Rule amendment would likely be vulnerable to legal challenges. Without reservations, adopting instream flow rules may preclude rural development if mitigation for streamflow impacts is not available. The challenge is especially acute in tributary areas, where smaller streams provide valuable spawning habitat and streamflows are typically below recommended instream flow levels in the late summer.

During 2014 Ecology shifted most of its instream flow rulemaking resources to an effort to identify durable, broad solutions for rural domestic water needs that will allow Ecology to successfully protect instream flows through its rulemaking efforts. To meet this objective, we invited stakeholders to discuss potential solutions/strategies. Typically 40-60 stakeholders took part in each of the meetings that occurred over the summer and early fall of 2014.

Ecology is analyzing options, synthesizing what we heard, and creating a summary document. We will continue to work with any willing individual, stakeholder, group, or policy-maker towards finding solutions for rural water conflicts. Updates will be available on Ecology's webpage at: <http://www.ecy.wa.gov/programs/wr/wrac/rwss.html>

³ See the Rule Implementation section below for more information on the effect of the Supreme Court decision on water use in the Skagit River watershed.

2014 Rulemaking Progress

Spokane River – Portions of WRIAs 54, 55, & 57

The rule adoption process for a new rule for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) Aquifer is underway. The watershed planning units for WRIAs 55-57, and WRIA 54 recommended adoption of an instream flow rule to help protect flows for public resources that rely on clean flowing water (hydropower, water quality, recreation, aesthetic values, fisheries, etc.). An instream flow rule is also needed for the Spokane River to help protect Washington State's interests in the event of an interstate water rights conflict with Idaho. Ecology believes interstate conflict between Washington and Idaho about the sole-source SVRP Aquifer and the hydraulically connected Spokane River is inevitable. Adopted instream flows in Washington cannot affect water management in Idaho, but can help provide a solid basis for future regional water supply decision making.

This rule proposal builds on the work, results, and recommendations of local watershed planning groups; recent scientific studies; and the re-licensing of Avista hydropower facilities; and is coordinated with efforts to improve water quality in the river. The rule will apply to the mainstem of the Spokane River and those portions of Spokane and Stevens counties within the boundary of the Spokane Valley Rathdrum Prairie Aquifer. The watershed is mostly served by public water systems with adequate water rights for future development. Ecology is working on providing a solution to ensure the few new permit-exempt uses in the rule area can proceed.

Proposed rule language was filed with the Office of the State Code Reviser on September 17, 2014, and a public hearing was held October 22 in Spokane Valley. Ecology adopted the new rule on January 27, 2015.

WRIA 25 - Grays-Elochoman & WRIA 26 - Cowlitz

We filed proposed rules for WRIAs 25 and 26 with the State Code Reviser's Office and held public hearings in May 2010. Rulemaking was discontinued after receiving strong community opposition. The opposition was primarily over the level of local participation, supply for rural water users in WRIA 26 (Cowlitz watershed), and concerns over groundwater well metering.

We agreed to slow future rulemaking until the local watershed planning unit could thoroughly review its plan and update recommendations for both WRIAs. From 2011 through 2013, the local planning unit broadened its base of citizen representation and public outreach.

On June 17, 2014, county commissioners in Lewis, Cowlitz, Wahkiakum, and Skamania counties adopted amendments to the watershed plan recommendations. The revised recommendations affect the Cowlitz watershed.

The new recommendations reduce the number of streams that would be closed to new withdrawals and call for reservations of water better scaled to meet future demand. The watershed planning process chose to recommend establishing reservations for future water use

after considering: other water supply options; the amount of expected demand for water; and the potential impacts to instream resources from new water uses, particularly impacts to fish habitat. The planning unit found that for rural areas in the watershed a reservation appears to be the best option available for new uninterrupted water use.

Ecology has begun issuing permits for new water rights in areas without closure recommendations. Rulemaking, however, is hampered by the recent decision in *Swinomish* and Ecology's lack of clear legal authority to establish reservations of water that must rely on an OCPI finding to allow limited impairment of instream flows. Since rule adoption is on hold pending a rural water supply strategy, Ecology is exploring alternatives to implement plan recommendations such as a memorandum of understanding (MOU) with the counties.

WRIA 3A - Samish Subbasin

Ecology filed a pre-proposal statement of inquiry (CR-101) in February 2005 to begin development of a water management rule in the Samish River subbasin. When a lawsuit was filed challenging the Skagit rule for WRIs 3 and 4, Ecology suspended Samish rulemaking until the outcome of that litigation was decided. On November 9, 2010, Thurston County Superior Court Judge Carol Murphy issued a letter opinion upholding the Skagit rule. On October 3, 2013, the Washington Supreme Court invalidated 2006 amendments to the rule for the Skagit Watershed that established reservations of water. Rule adoption in the Samish subbasin is on hold.

For additional information on the Skagit rule, read the section on Rule Implementation beginning on page 6.

Instream flow setting under the Watershed Planning Act Chapter 90.82 RCW

The Watershed Planning Act (WPA) provided local planning units the option of addressing instream flows as part of their watershed management plans. If the local jurisdiction adopts instream flow levels and other water management provisions into their plan, then state law directs Ecology to adopt instream flows in rule.

Of the 34 watershed planning units created, 27 chose to examine instream flows as part of their plan development. There is a broad range of progress within these watersheds, ranging from preliminary scientific studies to implementation of adopted rules.

Table 1, below, summarizes projected rulemaking progress under the WPA through 2015.

The WPA also reaffirmed Ecology's authority to adopt instream flows by rule in basins where watershed planning units could not reach consensus on flow recommendations or where there was no formal watershed planning. Ecology has adopted two water management/instream flow rules in basins not planning under the WPA:

- WAC 173-505 for WRIA 5, Stillaguamish (August 2005).
- WAC 173-503 for WRIA 3 & 4, Lower and Upper Skagit (See page 5, below).

Table 1. Rule Development Progress under the Watershed Planning Act RCW 90.82

Water Resource Inventory Area Name - Number	Start of Rule Development (File CR-101)	Rule Proposal (File CR-102)	Rule Adoption (File CR-103)
Entiat - 46	2004	2005	2005
Walla Walla – 32	2004	2007	2007
Wenatchee – 45	2007	2007	2007
Lewis – 27	2005	2008	2008
Salmon-Washougal – 28	2005	2008	2008
Quilcene-Snow - 17	2004	2009	2009
Elwha-Dungeness – 18 (Dungeness portion only)	2004	2012	2012
Grays-Elochoman – 25	2005	on hold	
Cowlitz – 26	2005	on hold	
Spokane 54, 55, & 57	2014	2014	Target January 2015

A map showing the statewide status of instream flow rulemaking activities is located in the appendix.

Petitions for Rule Amendment

The Administrative Procedure Act, Chapter 34.05 RCW, allows any person to request the adoption, amendment or repeal of any rule. The agency then has 60 days to respond to the petition. Ecology's instream flow rulemaking staff must provide the responses to petition requests.

1. Petition to amend Nooksack watershed rule

The Bertrand Creek Watershed Improvement District in Whatcom County filed a petition in October 2013 to amend Chapter 173-501 WAC, Instream Resources Protection for the Nooksack Water Resource Inventory Area (WRIA 1). The amendment request was to change year-round stream closures to seasonal closures. The petitioners argued this change will allow greater flexibility for stream flow enhancement projects. On December 5, 2013, Ecology denied the petition. The reasons for denial were the need for further technical analysis, limited state resources, and uncertainty about the Lummi and Nooksack Tribes' requests for quantification of their treaty-reserved water rights.

2. Petition to amend Dungeness watershed rule

The Olympic Resources Protection Committee (ORPC) filed a petition on January 21, 2014 to amend Chapter 173-518 WAC, the Water Resources Management program for the Dungeness portion of the Elwha-Dungeness Water Resources Inventory Area (WRIA 18). The water resources management rule for the Dungeness was adopted on November 16, 2012, and took effect on January 2, 2013. The petition requested that Ecology redevelop the entire rule, including instream flow levels and the water mitigation framework enabling new water uses. After thoroughly evaluating the issues presented in the petition, on March 18, 2014, Ecology denied the request to initiate a rule amendment. We believe we can achieve significant progress towards ORPC's concerns through rule implementation, and amendments are not needed. For more information about implementation of the Dungeness rule see page 6.

3. Petition to repeal Skagit watershed rule

On November 20, 2014 a petition to repeal Chapter 173-503 WAC, Instream Resources Protection Program – Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4) was filed by the Washington REALTORS, Building Industry Association of Washington, North Puget Sound Association of REALTORS, Skagit-Island County Building Association, Snohomish-Camano Association of REALTORS, Master Builders of King and Snohomish Counties, Washington State Farm Bureau, and the Just Water Alliance.

The Petitioners requested that Ecology repeal the rule then initiate a rulemaking process to develop a new rule that provides for reasonable levels of water uses in rural parts of Skagit County while protecting instream resources. In addition, if Ecology decided not to grant the petition to repeal the Rule, the Petitioners requested Ecology to determine “that the Skagit Basin Rule does not require tributary-based mitigation for exempt groundwater users, and that compliance with the Rule is based on the measurements of impacts at the Skagit River mainstem gauge in Mt. Vernon, as provided in WAC 173-503-040.”

After careful consideration of all the issues raised, Ecology denied the petition to repeal the rule. Ecology believes eliminating the existing instream flows without simultaneously replacing them with provisions compliant with RCW 90.54.0032(3)(a) would violate law and exceed Ecology's statutory authority. In addition, under current law, Ecology could not develop a rule for the Skagit Basin that would create available water for future community growth in rural areas, without a high risk of being challenged.

Ecology also gave careful consideration to the Petitioner's supplemental request regarding implementation of the current rule. Ecology determined we cannot commit at this time to the Petitioner's alternative suggestion to require mitigation only at the gage in Mt. Vernon. Ecology is concerned that further litigation, with an uncertain outcome, is likely if this approach is taken. Ecology's belief is that addressing the fundamental needs of all the stakeholders in this watershed, including the local and Tribal governments, is the only way permanent water management solutions will be achieved in the Skagit.

Requests for Future Rulemaking

Several watershed planning units have requested that Ecology initiate rulemaking to implement watershed plan recommendations regarding instream flows and future water management. Some watersheds are requesting new rules to protect instream flows and existing water users, and to make water availability determinations that will enable processing of pending water right permit applications. Other watersheds are requesting amendments to existing rules to refine instream flow protections and water management frameworks established in earlier rules.

The following watersheds have requested rulemaking:

- Wind-White Salmon (WRIA 29)
- Middle Snake (WRIA 35)
- Wenatchee (WRIA 45) (amendment)
- Methow (WRIA 48) (amendment)
- Foster/Moses Coulee (WRIs 50 and 44)
- Colville (WRIA 59) (amendment)

Ecology has no immediate plans for rule making in these areas. The primary reason is the effect of the *Swinomish* decision on Ecology's ability to develop rules that would create available water for future community growth in rural areas, without a high risk of being challenged.

In addition, more work is needed in these watersheds before rule making can proceed. We are working with stakeholders in these areas to support their efforts, for example: reviewing and negotiating scopes of work for assessments to support setting instream flows in the Middle Snake; and working with partners in the Colville for potential amendments to the existing instream flow rule. However, Ecology's resources for rulemaking are limited. In addition to completing rule adoption for the Spokane River, staff is engaged in the effort to find solutions for rural domestic water needs; responding to petitions to amend or repeal rules; responding to requests for information about instream flow protection; assisting with rule interpretation; and addressing pending litigation.

Rule Implementation

WRIs 3 and 4 - Skagit

The Skagit River Basin Instream Resources Protection Program rule (WAC 173-503) went into effect on April 14, 2001. It established instream flows throughout the basin to protect flow levels in streams. In 2006 the rule was amended to establish finite "reservations" of surface and groundwater for future out-of-stream uses. The reservations provided uninterruptible (year-round) water supplies for new agricultural, residential, commercial/industrial, and livestock uses, distributed among 25 subbasins. The Swinomish Tribe challenged the establishment of the reservations in 2008 and appealed a Thurston County Superior Court finding in Ecology's favor in 2010.

On Oct. 3, 2013, the Washington State Supreme Court ruled in *Swinomish Indian Tribal Community v. Department of Ecology* that Ecology exceeded its authority in establishing reservations of water when amending the rule for the Skagit watershed in 2006. The decision reinstated the 2001 Skagit Instream Flow Rule. Under the 2001 rule, water rights established on or after April 14, 2001, are subject to curtailment whenever stream flow in the river falls below the instream flow levels protected in the rule, unless the impact of that use is mitigated.

Without mitigation to offset impacts on the instream flows established under the 2001 Rule, water is not available for new year-round uninterruptible appropriations in the Skagit River Basin. As such, without mitigation or an alternative water source for use during periods of interruption, applicants for subdivision approvals and building permits cannot meet the requirements for adequate water supply under RCW 58.17.110 and RCW 19.27.097. Accordingly, Ecology has notified the County that it should not approve subdivision and building permit applications absent the approval of a mitigation proposal and/or alternative water source by Ecology.

The effect of the Supreme Court ruling in the Skagit watershed has been a near moratorium on new homes and subdivisions in rural areas where public water supply is not available. The decision also left many homes built after April 2001 and relying on the reservation of water invalidated by the court's decision without an assured legal water supply. This raises concerns about sales of existing homes, property values, and property tax revenue for the County.

Ecology is looking for water supply solutions for the 475 homes and 8 businesses that had relied on Skagit reservations for their water supplies since 2001. Ecology has decided to exercise enforcement discretion and not curtail the water use of these homes and businesses. The Swinomish Tribe agrees existing water uses should not be curtailed while mitigation is being developed.

A total of \$3.25 million in state funding has been allocated to address water supply needs within the Skagit watershed. We are working with local governments, tribal leaders, and stakeholders to determine the best and most cost-effective package of actions to address both instream and out-of-stream needs in the Skagit watershed. A complete description of water supply solutions for the Skagit watershed is available on Ecology's webpage at <http://www.ecy.wa.gov/programs/wr/nwro/skagit-wtrsolut.html>.

WRIA 14 - Kennedy-Goldsborough

The Squaxin Island Tribe raised concerns in 2008 and again in late 2009 that groundwater wells in the area are hurting stream flows in the Johns Creek subbasin of WRIA 14. The Tribe twice petitioned Ecology to amend the rule to limit future well use, and subsequently filed a lawsuit when Ecology denied both petitions. The appeals court's found that Ecology's decision not to engage in rulemaking was *not* arbitrary and capricious given the agency's contemplation of the petition, our competing priorities, and budgetary and staffing concerns.

Currently work continues on a groundwater model for the Johns Creek subbasin to help determine management actions to protect streamflow in Johns Creek.

WRIA 18 - Dungeness

The water resources management rule for the Dungeness was adopted on November 16, 2012, and took effect on January 2, 2013. On December 21, 2012, Ecology and Clallam County signed an agreement to implement the new Dungeness water management rule. The agreement helps ensure that implementation of the Dungeness rule is integrated into the county's building permit process.

To help building permit applicants meet the new mitigation requirements, we worked with Clallam County to establish the Dungeness Water Exchange, commonly called a "water bank." The exchange makes mitigation credits (water rights or portions of water rights) available to rural landowners and developers drilling wells or putting well water to a new beneficial use after January 2, 2013. The mitigation credits guarantee that new water uses are both reliable and will not harm stream flows.

The Dungeness Water Exchange has been actively selling mitigation packages for new water uses. Over 50 mitigation certificates for new homes have been sold since the rule took effect. The mitigation cost of indoor domestic water use has been offset by a \$100,000 state grant to Clallam County. Recently the Water Exchange created mitigation packages for new stockwatering use, in response to demand. Mitigation packages for marijuana growing are also being developed.

Since rule adoption, Ecology and Clallam County jointly hosted 10 rule implementation public forums, held approximately every other month. The forums provided an opportunity to explain implementation of the new rule, answer questions, discuss glitches and solutions, and monitor overall progress of the various elements of the new rule

In 2013, the Legislature approved spending \$2.05 million to develop projects and acquire water rights to enhance streamflows and provide mitigation water for rural development in the Dungeness watershed on the Olympic Peninsula. Work has been proceeding to put this funding to use.

There is a strong local interest in developing mitigation for new outdoor water uses in the southern portion of the watershed. Presently mitigation is available for indoor domestic use only in that area. Ecology and the Washington State Department of Fish and Wildlife are initiating a one year fish habitat flow sensitivity study that will provide information on the feasibility of additional mitigation for that area.

On December 31, 2014, The Olympic Resource Protection Council (ORPC) and two property owners in the Dungeness watershed on the Olympic Peninsula filed a lawsuit in Thurston County Superior Court seeking to invalidate the Dungeness Instream Flow Rule.

Appendix

Statewide Map of Instream Flows Set by Rule

